

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MA 304 OF 2016

(ARISING FROM CONSTITUTIONAL APPLICATION NO. 73 OF 2010)

IN THE MATTER OF AN APPLICATION FOR MANDAMUS

- 1. BEHANGANA DOMARO**
- 2. MANGADELEN BEHANGANA BIRUNGI.....**
APPLICANT/JUDGMENT DEBTOR

AND

- 1. ATTORNEY GENERAL**
- 2. TREASURY OFFICER OF ACCOUNTS, MINISTRY OF**
FINANCE.....RESPONDENT

BEFORE HON. LADY JUSTICE H. WOLAYO

RULING

The applicants through their advocates Akampumuza & Co. advocates sought for two substantive orders:

1. An order of mandamus to compel the respondents to carry out their statutory duty to pay 48,044,000/ and costs of the application.
2. A order for the respondents to appear before the court to show cause why they should not pay the above sums.

The respondents were represented by Ms Arinaitwe Goretti State Attorney and filed an affidavit in reply opposing the application.

The application was brought under section 3 of the Judicature Amendment Act 3 of 2002, and rules 3,4,5,6,7, & 8 of the Judicial review Rules 2009.

This means this application is for judicial review because an order of mandamus is a prerogative order that issues after the court is satisfied that the respondent has failed to perform their statutory duties to the detriment of the applicant. In which case, the applicant must demonstrate that a certificate of order was served on the respondents, as required by section 19 of the Government Proceedings Act.

Annexure B2 shows that the certificate of order was served on the 1st respondent on 22.11.2012. Annexure D3 , D4, and D5 are demand notes.

To the extent that the applicants have demonstrated that they complied with section 19 of the Government Proceedings Act and served the respondents with a certificate of order, I will now consider whether compliance with procedure is sufficient to warrant issuance of the prerogative order of mandamus.

Relying on the affidavit in reply of Frances Atoke the accounting officer in the Ministry of Justice , counsel for the respondent submitted that while the 1st respondent is aware of the certificate of order for 48,044,000/ , the 1st respondent filed Constitutional Court Misc. Application No. 34 of 2012 to set aside the ex parte taxation proceedings that led to the award.

Counsel for the applicant objected to the reliance on an application filed in the Court of Appeal on 13.9.2012 but which has never been prosecuted by the respondent.

While this is a legitimate point, the fact remains that the interim order is an interlocutory order pending the outcome of the main cause which is Constitutional Petition No. 53 of 2010 in which the present applicants are the petitioners.

For the applicant to invoke prerogative orders of the High Court, they must come when they have fully discharged their responsibilities under the litigation that led to the certificate of order.

While it is incumbent on the respondent to pursue their application to set aside the ex parte taxation in an interlocutory order , it is also incumbent on the applicants to prosecute their petition to its logical conclusion.

The practice of the courts is not to execute awards on interlocutory orders when the substantive cause is pending .The logic behind this stand is that the main cause may go the other side in which case the person who has been paid would have been unjustly enriched. Furthermore, it may lead to abuse of court process not to mention the multiplicity of applications that may arise from a threatened execution of such awards. It therefore follows that mandamus cannot issue to compel the Attorney General to honor costs on an interlocutory order.

Moreover, the award is still contested by the 1st respondent as evidenced by Constitutional MA 34 of 2012 .

In light of the pending litigation in the Constitutional Court in the main petition and the litigation to set aside the ex parte taxation that is sought to be executed, sufficient grounds have been demonstrated against the application for mandamus which I hereby dismiss with costs to the respondent.

DATED AT KAMPALA THIS 1ST DAY OF FEBRUARY 2017

HON. LADY JUSTICE H. WOLAYO